



## **Testimony of**

**Lowell R. Clary  
P3 Development Company, LLC  
Clary Consulting, LLC  
Tallahassee, Florida**

**Submitted to:  
Committee on Environment and Public Works  
United States Senate**

**Hearing:  
Federal, State, and Local Partnerships to  
Accelerate Transportation Benefits  
March 11, 2010**

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Madame Chair, Minority Leader Inhofe, and Members of the Committee:

I am Lowell Clary, Chief Operating Officer for P3 Development Company, LLC, and Managing Partner, Clary Consulting, LLC. Prior to my private sector career I served in Florida State government for 25 years, leaving my post as Assistant Secretary for Finance and Administration for the Florida Department of Transportation in late 2007. I also serve as the Chair of the Taxation and Finance Committee of the Transportation Research Board.

Thank you for the opportunity to present testimony on Federal, State, and Local Partnerships to Accelerate Transportation Benefits. It has been my pleasure to work on many projects in the public sector and now projects in the private sector that utilize the partnerships of all levels of government and in some cases the private sector to accelerate transportation benefits. I led the efforts for transportation finance and public-private partnerships for the Florida Department of Transportation and served on many national committees and panels related to these subjects.

**Examples of Solid Partnerships that Accelerated Transportation Improvements**

Let me briefly outline some projects that are excellent examples of partnerships that I have been fortunate to be a key part of moving these projects forward.

**Miami Intermodal Center**

The Miami Intermodal Center or "MIC" is a true intermodal center that will serve auto, bus, commuter rail, Metrorail, connection to air, and ultimately as the end station for High Speed Rail. The MIC project is a prime example of extensive partnerships including a number of overlapping Federal agencies and administrations (US DOT-FHWA, FRA, FAA, FTA; Corp of Engineers; and EPA), the State of Florida, Miami-Dade County (Miami-Dade Transit, Miami-Dade Aviation Department, County Administration), Miami-Dade Metropolitan Planning Organization, Miami-Dade Expressway Authority, several cities in Miami-Dade County, Airlines serving Miami International Airport, Rental Car Companies serving Miami International

Airport, and others. At times it was a bit like herding cats, however, through the strong leadership of Jose Abreu, former Florida Secretary of Transportation and District Secretary in Miami the project moved forward.

The project was simply an “idea” in 1997 and then Congress implemented the Transportation Infrastructure Finance and Innovation Act, better known as “TIFIA”. We cut our teeth with former US DOT Assistant Secretary Jack Basso and his team at US DOT in 1997/1998 to deliver the first ever TIFIA loan, and later a second TIFIA loan to advance the MIC program of projects from an idea to reality. Today, there are direct roadway connections from MIA to expressways both north and south of MIA; the consolidated rental car facility will open later this year; a people mover from MIA to the MIC is under construction, the MIC Central Station is in final design, and an added feature, the Miami Metrorail connection to the MIC is under construction. It took strong partnerships from all levels of government and the private sector for this project to move forward. For more information please refer to: [www.micdot.com](http://www.micdot.com)

### **IROX Design-Build-Finance**

In 2005, I-75 in Lee and Collier Counties of Southwest Florida was four lanes, with unacceptable congestion which was rapidly growing worse. The Florida Department of Transportation (FDOT) had just under \$470 million in improvements scheduled and funded over a five-year period to widen the roadway over 30 miles and enhance a number of interchanges with construction taking over nine total years. All parties, being the local counties, the Lee-Collier Metropolitan Planning Organization, FDOT and FHWA desired to move these projects along as quickly as possible due to the dire situation. The FDOT developed a new approach termed “Design-Build-Finance” or DBF in a partnership with the FHWA, local MPO, and the construction industry, who partnered with banks for the financing to advance the project. The FDOT combined the projects together and asked the construction industry to provide the bridge financing to allow the projects to be advanced. The construction industry responded and the combined project was developed to deliver all projects five years ahead of the original schedule. The project construction is running almost a year ahead of schedule, thus shaving six years off the original schedule. Thanks to FDOT District Secretary Stan Cann for the innovation to deliver these projects much sooner with a new method of project delivery. For more information please refer to: [www.irox75.com](http://www.irox75.com)

FDOT has moved forward a number of DBF projects totaling over \$2.15 billion in accelerated improvements in partnership with various local governments and the FHWA. The advancement of three of the most recent DBF projects also included ARRA funds.

### **95 Express**

Dr. Thomas DeCoster, a professor at Indiana University, has provided leadership training at FDOT for many years. Dr. DeCoster led a session where he reflected that K-12 schools and colleges taught us it is wrong to copy off of others as this is termed “cheating”. Then he said with gusto, “Cheat, Cheat, Cheat!” meaning that we should borrow good ideas that are not

proprietary information. The 95 Express project is patterned after SR-91 Express in Southern California. High Occupancy Toll (HOT) lanes or Express Lanes had been under discussion for a number of years in Miami-Dade County. The debates on HOT lanes were tough and there was no clear consensus to move HOT or express lanes forward. Then, in 2006/2007, US DOT created a discretionary program focused on innovative projects to provide options to heavily congested corridors, termed "Urban Partnerships". The solicitation for project proposals focused the attention of Miami-Dade County, the local MPO and the Florida Legislature in short order to advocate HOT lanes on I-95 from I-395/SR-836 in Miami north to I-595 in Ft. Lauderdale. The proposal was selected by US DOT and the Federal funds were combined with State funds and anticipated toll revenues to fund the first phase in 2007. The first phase of 95 Express created a new lane in each direction from the existing roadway footprint and combined this with the existing HOV lane to create the HOT lanes for ten miles in Miami-Dade County. This segment is fully operational and includes Bus Rapid Transit in the corridor that is funded from the toll revenues generated by 95 Express. The second phase that extends 95 Express north to I-595 is scheduled to move forward in 2010. Thanks to the innovation of former FDOT District Secretary Johnny Martinez and the leadership of FDOT Secretary Stephanie Kopelousos, and District Secretaries Gus Pego and Jim Wolfe to move 95 Express forward. For more information please refer to: [www.95express.com](http://www.95express.com)

#### **Availability Payment – Port of Miami Tunnel and I-595**

The FDOT had two major challenges that needed action where more comprehensive public-private partnerships provided an opportunity to move the projects forward.

**Port of Miami Tunnel** - The Port of Miami, the number one international cruise terminal and tenth in the United States in container cargo, is located on Dodge Island, which is served by one bridge that requires port traffic to use local streets in the City of Miami. This routes thousands of semi-trucks a day by American Airlines Arena, numerous new high-rise residential towers, or by Miami-Dade College and other local businesses. Users of the Port of Miami identified poor access at the Port as their number one concern. The poor access has created a major disadvantage in competing for port business and in part, resulted in the loss of existing Port users over the past few years.

After years of planning, the Project Development and Environmental review (Environmental Impact Study) was completed in the late 1990s. However, there was no consensus among the various parties to move the project forward. In 2005, FDOT discussed the project with various local officials and there was desire to move the project forward, however, the more than \$1 billion needed to fund the project had not been identified. The FDOT developed a flexible public-private partnership (PPP) approach where funding would be provided up front by the private partner and then reimbursed over time in a partnership between FDOT and Miami-Dade County/City of Miami at 50% each for capital cost and FDOT funding the annual operations and maintenance. The approach outlined was an "Availability Payment" where the private partner is responsible for the design-build-finance-operation-maintenance (DBFOM) of the project. The

public partners, under FDOT's leadership are responsible for paying a portion of the funds to the private partner during and at the completion of the project (five years for design-construction), with the remainder to be paid over the 30 year operating life of the project. The annual payment is termed an "availability payment" because the private partner must "earn" the payment by properly operating and maintaining the facility during each year. There are penalties up to and including deducts of the annual payment if performance measures are not met. The final agreement includes capital costs that are substantially below the FDOT estimate (\$865 million, including the risk reserve, compared to the FDOT estimate of \$1.2 billion). The financial close of the project occurred on October 15, 2009. The private partner secured financing in a very tough financial market that included bank loans, a TIFIA loan from US DOT (\$341 million), and equity from the private partners. It is unlikely the Port of Miami Tunnel project would have moved forward without the PPP approach. Thanks to the leadership of Miami-Dade County officials Mayor Alvarez, County Manager George Burgess, and Assistant County Manager Ysela Llorca and FDOT Secretary Stephanie Kopelousos, Districts Secretary Gus Pego and former District Secretary Johnny Martinez for moving the Port Tunnel forward. For more information refer to: [www.portofmiamitunnel.com](http://www.portofmiamitunnel.com)

**I-595** - The 595 Express improvements, an *Accelerate Florida* project, has created more than 900 jobs and more are anticipated as construction continues. The \$1.25 billion project is a Public Private Partnership (PPP) with I-595 Express LLC.

The 595 Express project is the only east to west expressway in Broward County and connects Port Everglades and Fort Lauderdale International Airport with I-95, I-75, the Sawgrass Expressway and Florida's Turnpike. Motorists will have travel options with three tolled, reversible express lanes in the existing I-595 median. Other project improvement efforts include operational enhancements to ramps and auxiliary lanes, noise walls, and express bus transit upgrades. To date, the improvements are the largest infrastructure project ever undertaken by the FDOT. By using a PPP and innovative contracting solutions, the I-595 Express project will be built in four-and-one-half years, an estimated 15 years earlier than the traditional method of construction. The contractors serve as the concessionaire to design, build, finance, operate and maintain the project for a 35-year term. Construction started in February 2010 and is scheduled to be completed in 2014. The PPP with I-595 Express LLC was the first availability payment approach project in the United States. The financing for the project also occurred during in a very challenging financial market and included banks loans, a TIFIA loan, and equity from the private partners. Thanks to the leadership of FDOT District Secretary Jim Wolfe, Assistant Secretary Kevin Thibault and Secretary Stephanie Kopelousos for moving 595 Express forward. For more information refer to: [www.i-595.com](http://www.i-595.com)

### **Sunrail**

Sunrail is a commuter rail line moving forward that will provide transit ridership options from south of Orlando north 60 miles parallel to I-4. Sunrail is a partnership between FDOT, local counties including Orange, Osceola, Seminole and Volusia, and US DOT. While commuter rail is not directly part of the purview of the Committee on Environment and Public Works, the benefits certainly are of interest to the Committee. These include foregoing the need for at least



one additional lane in each direction that would be needed on I-4 to accommodate the riders that will use commuter rail and the reduction in auto traffic thus reducing emissions in the environment. The leadership of FDOT Secretary Stephanie Kopelousos, District Secretary Noranne Downs, and local leaders in each County, legislative senior leaders and a host of others moved Sunrail forward. For more information refer to: [www.sunrail.com](http://www.sunrail.com)

### **Florida High Speed Rail**

Florida High Speed Rail (HSR) phase 1 from Tampa to Orlando has cleared the environmental phase and has about 95 percent of the land in government ownership needed to deliver a new generation HSR system on a "closed system". A "closed system" means the HSR system would operate on tracks that are not shared with any other rail system. This facilitates the ability to implement new HSR technologies that are operating in Europe and Asia. Again, this project is not directly the purview of the Committee on Environment and Public Works; however, the evaluation of the impact certainly falls within the Committee's responsibilities.

The capital cost of phase 1 of HSR in Florida is estimated at \$3.23 billion, with about 95% of land needed already in government ownership, with the land and work to date leaving the amount needed to implement the phase 1 at \$2.65 billion. Florida received a grant of \$1.25 billion from the ARRA funds dedicated to HSR. There are no other "closed systems" that are ready to move new generation HSR forward in short order. This project provides an opportunity to move forward with new generation in HSR in the United States. There are many challenges that must be addressed including that new generation HSR is new to funding/regulatory agencies like US DOT and there are strong competitors that can deliver solid new generation HSR systems. Florida HSR phase 1 provides an early opportunity to break new ground, test new methods, identify the steps needed for implementation and fully evaluate the cost/benefit of HSR for a modest total investment compared to much more extensive/expensive HSR systems. For more information refer to: [www.floridahighspeedrail.org](http://www.floridahighspeedrail.org)

### **Summary on Projects**

These are just a few of the examples of Federal, state and local partnerships to accelerate the delivery of transportation improvements. The common thread among the above projects is each set of partnership/tools advanced projects or moved a project forward that would not have otherwise moved without these key partnerships and access to innovative finance tools. There are many great examples across the country that could be added to these examples. The key is flexibility to mix and match the best tools in a partnership to advance the project forward.

### **Programs**

Outlined below are examples of key programs that have fostered strong partnerships that advanced transportation improvements.

### **Strategic Intermodal System**

Florida created an innovative approach to the key transportation facilities in Florida termed the Strategic Intermodal System, or SIS. The SIS was developed in a strong partnership with Federal and local partners. The SIS:

- Is made up of statewide and regionally significant facilities and services **(strategic)**
- Contains all forms of transportation for moving both people and goods, including linkages that provide for smooth and efficient transfers between modes and major facilities **(intermodal)**
- Integrates individual facilities, services, forms of transportation (modes) and linkages into a single, integrated transportation network **(system)**

The SIS is a statewide network of high-priority transportation facilities, including the state's largest and most significant commercial service airports, spaceport, deepwater seaports, freight rail terminals, passenger rail and intercity bus terminals, rail corridors, waterways and highways. These facilities are the workhorses of Florida's transportation system, carrying more than 99 percent of all commercial air passengers, virtually all waterborne freight tonnage, almost all rail freight, and more than 68 percent of all truck traffic and 54 percent of total traffic on the State Highway System.

The State of Florida organized funds from Federal sources and state funds to create a funding source for the SIS. FDOT districts partner with the local governments through the Metropolitan Planning Organizations to identify projects that qualify under the SIS for possible SIS funding. These are then developed into a statewide pool that is refined and selected based on performance based selection criteria across all modes of transportation. This process has advanced many projects that would not have otherwise move forward due to traditional stovepipe sources of funding such as key intermodal connectors at seaports and airports and intermodal centers that connect multiple modes of transportation. Former FDOT Secretaries Tom Barry, Jose Abreu and Denver Stutler, and former Assistant Secretary Ysela Llorca provided the leadership to move the SIS forward. For more information please refer to: [www.dot.state.fl.us/planning/sis/](http://www.dot.state.fl.us/planning/sis/)

### **Pricing - Tolling**

The State of Florida has provided transportation improvements for many years through tolling. Today, there are over 750 miles of toll facilities serving the traveling public in Florida. In 2009 these toll facilities provided just under \$1.2 billion in total revenues, equivalent to 10.5 cents in State gas tax in Florida. These toll facilities provide most of the expressway system miles in Orlando, a major portion of expressway system miles in the Tampa Bay area, Ft. Lauderdale, and Miami. Since 1990, almost all new expressway system centerline miles in Florida have been constructed as toll facilities. Florida has instituted an aggressive effort to institute electronic tolling and has a penetration rate in most major urban areas of over 70 percent of users travelling through electronic tolling. The toll operators are aggressively moving forward with plans to provide 100 percent free flow travel on the various toll facilities through electronic tolling and other alternative means of payment other than toll booths. For more information refer to: [www.dot.state.fl.us/financialplanning/finance/tftrf/FDOT\\_Assisted\\_Toll\\_Facilities.pdf](http://www.dot.state.fl.us/financialplanning/finance/tftrf/FDOT_Assisted_Toll_Facilities.pdf)

**Florida State Infrastructure Bank**

The State of Florida instituted the Florida State Infrastructure Bank (SIB) in the FDOT in 1997. The first SIB, termed the "Federal SIB" created was from Federal funds as authorized in the Federal SIB pilot program created in the National Highway System of 1995. The Federal SIB was adjusted by TEA-21 and subsequent legislation. These adjustments created stovepipes in the Federal SIB, thus complicating the ability to make loans beyond typical roadway or transit improvements that are standalone projects that meet Federal standards.

The State of Florida expanded the SIB in 2000, when Section 339.55, Florida Statutes was created to institute a "State SIB" program. The State SIB program is funded with state funds and is multi-modal allowing loans for all modes of transportation on an equal footing. The State SIB is very flexible with the ability to defer payments, subsidize interest rates, be subordinate to senior debt, and with terms up to 30 years. The program also includes the ability to issue bonds supporting by the SIB loan portfolio. FDOT issued the first bonds in the United States backed solely by the existing and future loans in the State SIB program. The issuance of bonds has allowed the program to greatly expand the ability to make additional loans.

Federal SIB has supported a total of 29 projects with a total cost of \$1.08 billion, with the SIB loans totaling \$324 million for a leverage factor of over three times. The State SIB has supported a total of 36 projects with a total cost of \$7.24 billion, with the SIB loans totaling \$761 million for a leverage factor of over nine times. Both the Federal and State SIB equal a total project cost of \$8.3 billion, with SIB loans at \$1.085 billion, with a leveraging factor overall of over 7.6 times. The majority of these projects were originated by local governments and expressway authorities in a partnership with the State of Florida. For more information refer to: [www.dot.state.fl.us/financialplanning/finance/sib.shtm](http://www.dot.state.fl.us/financialplanning/finance/sib.shtm)

**Efficient Environmental Processes**

One of the biggest portions of the project cycle relates to the environmental process that involves the review and resolution of many key issues over an extended period of time that may be as much as four years on major projects prior to environmental approvals being provided.

On many projects there is a need for mitigation related to a host of issues such as impacts to wetlands or protected wildlife. The State of Florida has created comprehensive programs in cooperation between the various entities involved in environmental issues. For example, when wetlands may be impacted the entity moving the project forward may pay into an established process at the State Department of Environmental Protection at preset rates based on the number of acres that are impacted. The payment of these established fees allows the transportation project to move forward. Further, it leaves the responsibility of securing the acreage to compensate for the impacted areas with the environmental experts who then can combine payments from multiple projects to secure entire basins in the region producing a more robust environmental protection zone that makes long-term sense. For more information refer to:



[www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String=&URL=Ch0373/SEC4137.HTM&Title=->2009->Ch0373->Section%204137#0373.4137](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0373/SEC4137.HTM&Title=->2009->Ch0373->Section%204137#0373.4137)

Florida also created an Efficient Transportation Decision Making process. ETDM is a major change in the traditional way of doing business as projects are planned and the environmental review process is implemented. The various resource agencies at the Federal, state and local level are involved earlier and throughout the process. The ETDM process provides “screens” that work to identify key issues early in the project planning and development process. Either the project is modified to avoid key concerns or if this is not possible the appropriate partners are brought in early and close coordination is maintained to ensure the environmental issues are addressed in the most efficient manner and that the project moves forward in a timely manner. The ETDM allows major projects to move forward in a timely manner while ensuring that the environment is protected or enhanced in the development and implementation of the project. For more information refer to: [www.dot.state.fl.us/emo/ETDM.shtm](http://www.dot.state.fl.us/emo/ETDM.shtm)

### **Challenging Funding Situation**

I do not need to add my voice to the long list of very accomplished officials and studies that have discussed the very challenging funding situation. I would note that the State of Florida was the very first state to experience negative vehicle miles travelled and to see reductions in the forecast of future gas tax collections. I felt somewhat like “Chicken Little” bringing this up at national meetings back then, but it ended up being an early trend for the rest of the nation.

I was in a workshop in California last week sponsored by the California Foundation on the Environment and Economy. This workshop was focused on ideas to move infrastructure improvements forward in both water and transportation. The event was well attended by state and local elected leaders and appointed officials. During one discussion the topic came up of raising the gas tax as a possible solution. Several elected officials felt this was a possible solution. A gentleman spoke up that he has supported numerous local governments in promoting and passing local sales tax initiatives in California. Further, that during his work they periodically survey the public on possible options to raise funds for transportation. The gentleman said there is little to no support for raising the gas tax in the surveys. After further discussion, all agreed that a gas tax increase would be only an interim solution if it could even pass political muster to move forward. This was due to the major impact to the consumption of gas/diesel fuel due to more fuel efficient vehicles and other issues. Interestingly, he said there is much more support for tolling as an option to raise revenues and also that sales tax initiatives have been successful, even during the down economy as recently experienced in Los Angeles.

In my work as the Chair of the Taxation and Finance Committee of the Transportation Research Board I have run across all of the various studies over the past two years plus many papers written to address the “shortfall” in transportation funding. After some time, it all seemed to run together as there was so much input from the various interested groups. My key observation is there seems to be **NO** consensus on the method to raise funds for investment in transportation.

### **Flexibility Is Needed**

States and local governments were struggling to fund much needed infrastructure improvements prior to the recession. Now they are struggling to meet day to day needs. Today, in most states and local governments, the only method to move large projects forward is to borrow funds and it may require a user fee, such as tolls, impact fees or some other charge to pay part or all of the project cost. In this environment it is essential that state and local governments be provided the maximum flexibility to move projects forward. This flexibility crosses all boundaries including:

- Provide Federal funds in the most flexible programs and funding “pots” as possible. Strive to make these programs and funding pots intermodal like the Florida Strategic Intermodal System. Consider creating a Federal Strategic Intermodal System.
- Allow the maximum flexibility on state and local funding options such as user fees (tolls, impact fees, or other use charges). Current House proposals restrict this authority.
- Don’t limit flexible project delivery methods such as design-build and public-private partnerships (design-build-finance, design-build-finance-operate-maintain, or other combinations)
- Improve the Federal credit assistance programs
  - Continue and improve TIFIA – address the springing lien, expand to all modes of transportation, provide a stable annual funding level
  - Review the need for multiple/overlapping Federal credit assistance programs such as TIFIA, RRIF, proposed National Infrastructure Bank to see if one expanded program can address all needs
  - Improve the State Infrastructure Bank program in Federal law – make it multi-modal, incentivize funding SIBs
  - Remove or increase the volume cap on Private Activity Bonds
  - Continue Build America Bonds
- Improved coordination of the environmental review and approval process among the various Federal entities in coordination with state and local partners.

### **Closing**

Thank you for the opportunity to share my testimony with your Committee. My best wishes on meeting the major challenges that face the Committee in moving forward with a new or revised Federal transportation program.

### **Follow Up Contact:**

Lowell R. Clary  
2260 Wednesday Street, Suite 200  
Tallahassee, Florida 32308  
[lclary@p3devco.com](mailto:lclary@p3devco.com)  
850-391-9798 (office) 850-212-7772 (cell)